

**STATE OF COLORADO
DEPARTMENT OF REVENUE
MOTOR VEHICLE DEALER BOARD**

NOTICE OF RULE-MAKING HEARING

HEARING DATE: Tuesday, November 18, 2014
TIME: 1:00 P.M.
PLACE: 1881 Pierce Street --- Room 110
Lakewood, Colorado 80214

- The Colorado Motor Vehicle Dealer Board will hold a rule-making hearing to consider proposed additions and changes to regulations in both 1 CCR 205-1 (Dealing in Motor Vehicles) and 1 CCR 205-2 (Dealing in Powersports Vehicles), as set out in the pages that follow.
- The hearing will involve advertising regulations --- specifically a proposed new regulation # 12-6-102 (1.5) and proposed revisions of both regulation # 12-6-118 (3) (k) and regulation # 12-6-520 (3) (i).
- All interested persons are invited to attend and, if they choose, to make an oral comment, during the public comment portion of the hearing, to add to the official record for the Board's consideration.

FORMATTING KEY

FOR PROPOSED NEW AND REVISED RULES

- I. Non-bolded punctuation marks, letters, numbers and/or words ---
--- Signifies unchanged language in an existing Rule.

- II. Bolded strike-through of punctuation marks, letters, numbers, and words
[e.g., **salesperson**] ---
--- Signifies punctuation marks, letters, numbers, and/or words proposed to be removed from an existing Rule.

- III. Bolded CAPITAL LETTERS ---
 - A. Either signifies proposed new language elements in an existing rule
[e.g., **DEALER**, or, e.g., vehicle**S**]; or,
 - B. Signifies a proposed entirely new rule.

**PROPOSED NEW AND REVISED RULES
IN THE CONTEXT OF 1-CCR 205-1 ----
DEALING IN MOTOR VEHICLES**

Proposed New Regulation 12-6-102 (1.5)

STATEMENT OF AUTHORITY, BASIS AND PURPOSE

The Statutory Authority for the adoption of this new Regulation 12-6-102 (1.5) is Section 12-6-101, C.R.S., Section 12-6-102, C.R.S., Section 12-6-102 (1.5), Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-118, C.R.S., and, Section 12-6-118 (3)(k), C.R.S.

The Basis and Purpose for adoption of this new regulation in the Motor Vehicle Dealer Board Regulations is to define the term, “computer display.”

PROPOSED NEW REGULATION:

REGULATION 12-6-102 (1.5)

THE TERM, “COMPUTER DISPLAY,” MEANS ANY ELECTRONIC DEVICE CAPABLE OF PRESENTING A COMMERCIAL MESSAGE.

Proposed Revised Regulation 12-6-118 (3) (K)

STATEMENT OF AUTHORITY, BASIS AND PURPOSE

The Statutory Authority for the adoption of this revised Regulation 12-6-118(3)(k) is Section 12-6-101, C.R.S., Section 12-6-102, C.R.S., Section 12-6-102 (1.5), Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-118, C.R.S., and, Section 12-6-118(3)(k), C.R.S.

The Basis and Purpose for adoption of this revised regulation in the Motor Vehicle Dealer Board Regulations is consumer protection, better compliance, and improved enforcement through: 1) simplifying and clarifying prohibited uses of the term, “used”; 2) adding “prior rental vehicle” to the list of other known vehicle history statuses that an advertiser must disclose in an advertisement; 3) prohibiting the combination of rebates, incentives, and other offers, and prohibiting the impression that rebates, incentives, and other offers are attainable, if they are not; 4) adding a requirement that if an advertisement relates to a lease agreement, the advertisement must clearly and conspicuously disclose that the terms of the advertisement relate to a lease, not a purchase; 5) prohibiting misleading statements that may falsely assure a prospective credit purchaser of credit financing; and, 6) defining the term, “bait advertising,” and prohibiting bait advertising.

PROPOSED REVISED REGULATION:

REGULATION 12-6-118(3)(k)

Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 1. Advertising a motor vehicle which is not in operable condition unless specifically disclosed.

Rule 2. Advertising which would imply the dealer is going out of business when such is not the case.

Rule 3. Advertising a specific motor vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. If a specific number of motor vehicles is advertised, such vehicles must have been invoiced to the dealer.

Rule 4. Using a picture or photograph of a vehicle in advertising when the picture or photograph is not the same make, year and equipment actually being offered for the price or terms advertised.

Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.

Rule 6. ~~Advertising used motor vehicles to create the impression that they are new or using the word "new" when advertising used vehicles, such as "new, used cars". Any vehicle of the current model or the previous model year which is a used vehicle shall be so identified in any advertisement for said vehicle.~~ A USED VEHICLE SHALL NOT BE ADVERTISED IN ANY MANNER THAT CREATES THE IMPRESSION THAT IT IS NEW.

Rule 7. Advertising motor vehicles which are known by the dealer to be salvage or rebuilt from salvage, taxi cabs, PRIOR RENTAL VEHICLES, flooded vehicles or police vehicles, which are not so identified in the advertisement.

Rule 8. Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a vehicle when no such benefit exists.

Rule 9. Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as "write your own deal," "name your own price," "no reasonable offer refused," and "we will not be undersold." Advertising any item as "free" which is associated with or conditioned upon the negotiated sale of a motor vehicle.

Rule 10. Advertising sales prices for used motor vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount.

Rule 11. Advertising any reference to "dealer cost" or "invoice" price. Advertising the word "wholesale" in connection with the retail offering of motor vehicles.

Rule 12. Advertising a specific trade-in amount or range of amounts without, in fact, offering such a trade-in amount and, failing to disclose or advertise the M.S.R.P., sale price, or capitalized cost of the vehicle from which the trade-in will be deducted.

Rule 13. Advertising the price of a vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of emissions test, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser's request.

Rule 14. Advertising any specific discount or rebate on new motor vehicles without the manufacturer's suggested retail price conspicuously stated in the ad. **WHEN ADVERTISING REBATES, INCENTIVES, OR OTHER OFFERS, A DEALER SHALL NOT COMBINE SUCH OFFERS OR GIVE THE IMPRESSION THAT SUCH OFFERS ARE ATTAINABLE, WHEN IN FACT THEY ARE NOT.**

Rule 15. Advertising any qualifying statement or disclosure which is not clear, conspicuous, and readable, and which is not adjacent to the offer or terms it qualifies, and in less than eight-point type.

Rule 16. Advertising any contest that offers to prospective participants the opportunity to receive or compete for gifts or prizes without such advertisement containing the words "no purchase or payment of any kind is necessary to enter or win this contest" in bold-faced type and at least ten-point type.

RULE 17. IF ANY ADVERTISEMENT RELATES TO A LEASE, THE ADVERTISEMENT SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THAT THE ADVERTISEMENT IS FOR THE LEASE OF A VEHICLE.

RULE 18. STATEMENTS, SUCH AS "EVERYBODY FINANCED," "NO CREDIT REJECTED," "WE FINANCE ANYONE," AND OTHER STATEMENTS REPRESENTING OR IMPLYING THAT NO PROSPECTIVE CREDIT PURCHASER WILL BE REJECTED BECAUSE OF HIS INABILITY TO QUALIFY FOR CREDIT, ARE PROHIBITED, UNLESS SUCH STATEMENTS ARE TRUE.

RULE 19. BAIT ADVERTISING, AS DEFINED IN § 18-5-303, C.R.S., IS NOT ALLOWED.

**PROPOSED NEW AND REVISED RULES
IN THE CONTEXT OF 1-CCR 205-2 ----
DEALING IN POWERSPORTS VEHICLES**

Proposed Revised Regulation 12-6-520(3) (I)

STATEMENT OF AUTHORITY, BASIS AND PURPOSE

The Statutory Authority for the adoption of this revised Regulation 12-6-520(3)(i) is Section 12-6-102, C.R.S., Section 12-6-102 (1.5), C.R.S., Section 12-6-103, C.R.S., Section 12-6-104, C.R.S., Section 12-6-501, C.R.S., Section 12-6-502, C.R.S., Section 12-6-503, C.R.S., Section 12-6-504, C.R.S., Section 12-6-520, C.R.S., and Section 12-6-520(3)(i), C.R.S.

The Basis and Purpose for adoption of this revised regulation in the Motor Vehicle Dealer Board Regulations is consumer protection, better compliance, and improved enforcement through: 1) simplifying and clarifying prohibited uses of the term, “used”; 2) prohibiting the combination of rebates, incentives, and other offers, and prohibiting the impression that rebates, incentives, and other offers are attainable, if they are not; 3) adding a requirement that if an advertisement relates to a lease agreement the advertisement must clearly and conspicuously disclose that the terms of the advertisement relate to a lease, not a purchase; 4) prohibiting misleading statements that may falsely assure a prospective credit purchaser of credit financing; 5) defining the term, “advertising,” and the term, “computer display,” and, 6) defining the term, “bait advertising,” and prohibiting bait advertising.

PROPOSED REVISED REGULATION:

REGULATION 12-6-520(3)(i)

Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 1. Advertising a powersports vehicle which is not in operable condition unless specifically disclosed.

Rule 2. Advertising which would imply the dealer is going out of business when such is not the case.

Rule 3. Advertising a specific powersports vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model, if known, and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. If a specific number of powersports vehicles are advertised, such vehicles must have been invoiced to the dealer.

Rule 4. Using a picture or photograph of a powersports vehicle in advertising when the picture or photograph is not the same make, year and equipment actually being offered for the price or terms advertised.

Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.

Rule 6. ~~Advertising used powersports vehicles to create the impression that they are new or using the word "new" when advertising used powersports vehicles, such as "new, used powersports vehicles"~~. ~~Any powersports vehicle of the current model or the previous model year which is a used powersports vehicle shall be so identified in any advertisement for said powersports vehicle.~~ A USED POWERSPORTS VEHICLE SHALL NOT BE ADVERTISED IN ANY MANNER THAT CREATES THE IMPRESSION THAT IT IS NEW.

Rule 7. Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a powersports vehicle when no such benefit exists.

Rule 8. Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as "write your own deal," "name your own price," "no reasonable offer refused," and "we will not be undersold." Advertising any item as "free" which is associated with or conditioned upon the negotiated sale of a powersports vehicle.

Rule 9. Advertising sales prices for used powersports vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount

Rule 10. Advertising any reference to "dealer cost" or "invoice" price. Advertising the word "wholesale" in connection with the retail offering of powersports vehicles.

Rule 11. Advertising a specific trade-in amount or range of amounts without, in fact, offering such a trade-in amount and, failing to disclose or advertise the M.S.R.P., sale price, or capitalized cost of the powersports vehicle from which the trade-in will be deducted.

Rule 12. Advertising the price of a powersports vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of any required emissions test, and transportation costs, incurred after sale, to deliver the powersports vehicle to the purchaser at the purchaser's request.

Rule 13. Advertising any specific discount or rebate on new powersports vehicles without the manufacturer's suggested retail price conspicuously stated in the ad. **WHEN ADVERTISING REBATES, INCENTIVES, OR OTHER OFFERS, A DEALER SHALL NOT COMBINE SUCH OFFERS OR GIVE THE IMPRESSION THAT SUCH OFFERS ARE ATTAINABLE, WHEN IN FACT THEY ARE NOT.**

Rule 14. Advertising any qualifying statement or disclosure which is not clear, conspicuous, and readable, and which is not adjacent to the offer or terms it qualifies, and in less than eight-point type.

Rule 15. Advertising any contest that offers to prospective participants the opportunity to receive or compete for gifts or prizes without such advertisement containing the words "no purchase or

payment of any kind is necessary to enter or win this contest” in bold-faced type and at least ten-point type.

RULE 16. IF ANY ADVERTISEMENT RELATES TO A LEASE, THE ADVERTISEMENT SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THAT THE ADVERTISEMENT IS FOR THE LEASE OF A POWERSPORTS VEHICLE.

RULE 17. STATEMENTS, SUCH AS “EVERYBODY FINANCED,” “NO CREDIT REJECTED,” “WE FINANCE ANYONE,” AND OTHER STATEMENTS REPRESENTING OR IMPLYING THAT NO PROSPECTIVE CREDIT PURCHASER WILL BE REJECTED BECAUSE OF HIS INABILITY TO QUALIFY FOR CREDIT, ARE PROHIBITED, UNLESS SUCH STATEMENTS ARE TRUE.

RULE 18. THE TERM, “ADVERTISEMENT,” SHALL HAVE THE SAME MEANING AS SET FORTH IN § 12-6-102 (1.5), C.R.S., AND THE TERM, “COMPUTER DISPLAY,” MEANS ANY ELECTRONIC DEVICE CAPABLE OF PRESENTING A COMMERCIAL MESSAGE.

RULE 19. BAIT ADVERTISING, AS DEFINED IN § 18-5-303, C.R.S., IS NOT ALLOWED.